IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12648 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VIJAY RAMESH DEVPURTA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12648 of 2004

MS SUBHADRA G PATEL for Petitioner No. 1

MR HM PRACHCHHAK AGP for Respondent No.3

RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 14/02/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the

order passed against him by Police Commissioner, Surat City, on 27th August, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as dangerous person from 27th August, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two types of materials. Firstly the detaining authority took into consideration four criminal cases against the petitioner for theft punishable under Section 379 of the Indian Penal Code. Secondly, the detaining authority relying upon the incamera statements of the witnesses as recorded by the sponsoring authority on 6th August, 2004 and 7th August, 2004, as verified by the detaining authority on 21st August, 2004. The identity of the witnesses is not disclosed claiming privilege under Section 9(2) of the PASA Act by the detaining authority.

3. It was alleged that first case came to be registered against the petitioner on 19th January, 2004 before Varachchha Police Station, wherein it was alleged that the petitioner committed theft in respect of one T.V.S. Scooty motor cycle, second case came to be registered on 24th July, 2004 before Varachchha Police Station, wherein the allegation was, the petitioner committed theft in respect of three mobile phones, third case came to be registered on 8th November, 2003 before Varachchha Police Station, wherein the allegation was the petitioner committed theft in respect of one hero-honda motor cycle and last and fourth case came to be registered on 5th March, 2004 before Varachchha Police Station, wherein the allegation was, the petitioner was stealing one hero-honda C.D.Dawn motor cycle. In these four cases, the petitioner was arrested and was released on bail by the Court competent. The petitioner in first case came to be arrested on 27th July, 2004 and released on bail on 28th July, 2004, in second case, also he was arrested on 28th July, 2004 and was released on 29th July, 2004, in third case, he was arrested on 16th May, 2004 and was released on the same day and in fourth case, he was arrested on 15th May, 2004 and was released on 16th May, 2004. So in all cases registered against the petitioner, he was released on bail. The last offence in point of time, came to be registered against the petitioner on 24th July, 2004 wherein he was released on bail on 29th July, 2004. The detaining authority also relied upon two incamera statements of the witnesses as

aforesaid. The first witness, referred to an incident occurred on 27th June, 2004 wherein the petitioner and his associates forced the witness to keep stolen scooty motor cycle and on refusal by the witness, the petitioner was beaten and it was also alleged that though a crowd was gathered, but the petitioner and his associates with big knives and other weapons rushed towards the crowd, so the people started running helter-skelter. The second incident occurred on 4th July, 2004 wherein the witness was beaten by the petitioner and his associates on suspicion that the witness was providing information to the police in respect of the illegal activities of the petitioner. There also a crowd was gathered but on account of fear and terror of the petitioner and his associates, the crowd was disbursed in both the incidents. It was alleged that the normal life in the locality was disturbed, the shop owners closed their shops, the residence stayed in their houses after closing the doors and the normal life was disturbed.

4. From the above material, the detaining authority came to the conclusion that the petitioner was a habitual offender and was engaged in the activities of committing theft. The detaining authority came to the conclusion that the petitioner was head strong person and after forming gang, keeping deadly weapons, for executing his illegal activities harassing innocent citizens and beating them. The detaining authority came to the conclusion that the activities of the petitioner were prejudicial to the maintenance of public order and were required to be prevented forthwith. After considering, other remedies available in the general law, against the petitioner, the detaining authority came to the conclusion that there was no other alternative, except to detain the petitioner under the PASA Act as dangerous person. Therefore, the detaining authority passed the order of detention of the petitioner, which is under challenge in this petition.

5. Learned advocate Ms.Banna Dutta for learned advocate Ms.S.G.Patel for the petitioner and learned AGP Mr.H.M.Prachchhak for the respondent No.3 were heard at length.

6. Out of various grounds urged on behalf of the petitioner to challenge the order of detention as opposed and controverted by the learned AGP, it appears that this petition can be examined and disposed of on the sole issue that whether the order of detention is vitiated on account of delay in passing the order. While going through the papers served upon the detenu at the time of

execution of the order, it is clear that in last offence in point of time, the petitioner came to be released on bail on 29th July, 2004. The said offence came to be registered against the petitioner on 24th July, 2004. The order under question came to be passed by the detaining authority on 27th August, 2004. In the mean time, it appears that two incamera statements came to be recorded by the sponsoring authority on 6th August, 2004 and 7th August, 2004, referring to the incidents of 27th June, 2004 and 4th July, 2004. In this background of fact, it is required to be considered whether live link between the activities of the petitioner and passing of the order of detention is snapped.

7. It appears that the facts of the present case are squarely covered by a decision of this court, in the case of ELESH NANDUBHAI PATEL Vs. COMMISSIONER OF POLICE, AHMEDABAD CITY AND OTHERS, reported in 1997 (1) GLH 381. In the said case, the last registered case against the petitioner was of May 20, 1996, the petitioner was released on bail and the order of detention came to be passed in November 5, 1996, after five months. Mean time two incidents of 2nd October, 1996 and 10th October, 1996 as stated by the witnesses through incamera statements giving life to Stale incidents were taken into consideration by the detaining authority. In those backgrounds of facts, this Court observed that the order under challenge was vitiated on account of unexplained delay in passing the order. The Court relied upon the decision of the Apex Court in the matter of PRADEEP NILKANTH Vs. S. RAMAMURTY, as reported in 1993 (2) Suply. SCC 61.

8. On this principle of law which is established, it is clear that unexplained delay in passing the order of detention vitiates the order itself. In this case, though the detaining authority came to the conclusion that the activities of the petitioner was required to be prevented forthwith and the order came to be passed on that ground. However, the fact remains that though the sponsoring authority recorded the statements of the witnesses on 6th and 7th August, 2004, the same came to be verified by the detaining authority only on 21st August, 2004. There may be cases, wherein there may be grounds for delay in making proposal to the detaining authority or there may be grounds for detaining authority in verifying the material placed before him and to pass the order of detention, but in the facts of this case what was placed before the detaining authority was the papers of investigation of criminal cases registered against the petitioner and two incamera statements. The

delay caused during recording of the statements by the sponsoring authority as verified by the detaining authority remains explained vitiating the live link between the activities of the petitioner and his detention under the PASA Act. Nothing is mentioned in the reasoning served upon the petitioner that how the detaining authority verified the incamera statements on 21st August, 2004 only, when the same were recorded by sponsoring authority on 6th and 7th August, 2004. The order under question, therefore, is required to be quashed on this ground alone, that the delay caused in passing the order of detention as indicated above snapped the live link between the activities of the petitioner in passing the order. The subjective satisfaction arrived at by the detaining authority to detain the petitioner under the PASA Act is not valid, legal and in accordance with law.

9. In the result, the petition is allowed. The order passed by the Police Commissioner, Surat City on 27th August, 2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The detenu Vijay Ramesh Deviputra is hereby ordered to be set at liberty forthwith if he is not required to be detained in Jail for any other purpose. Rule is made absolute. Direct service is permitted.

[J. R. VORA,J.]

(vijay)